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J. R. McDONALD, [redacted]
MARY E. MORRIS,

vs.

SANTA CARBONA IRRIGATION DISTRICT,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

to the United States Circuit Court of Appeals for the Ninth Circuit.

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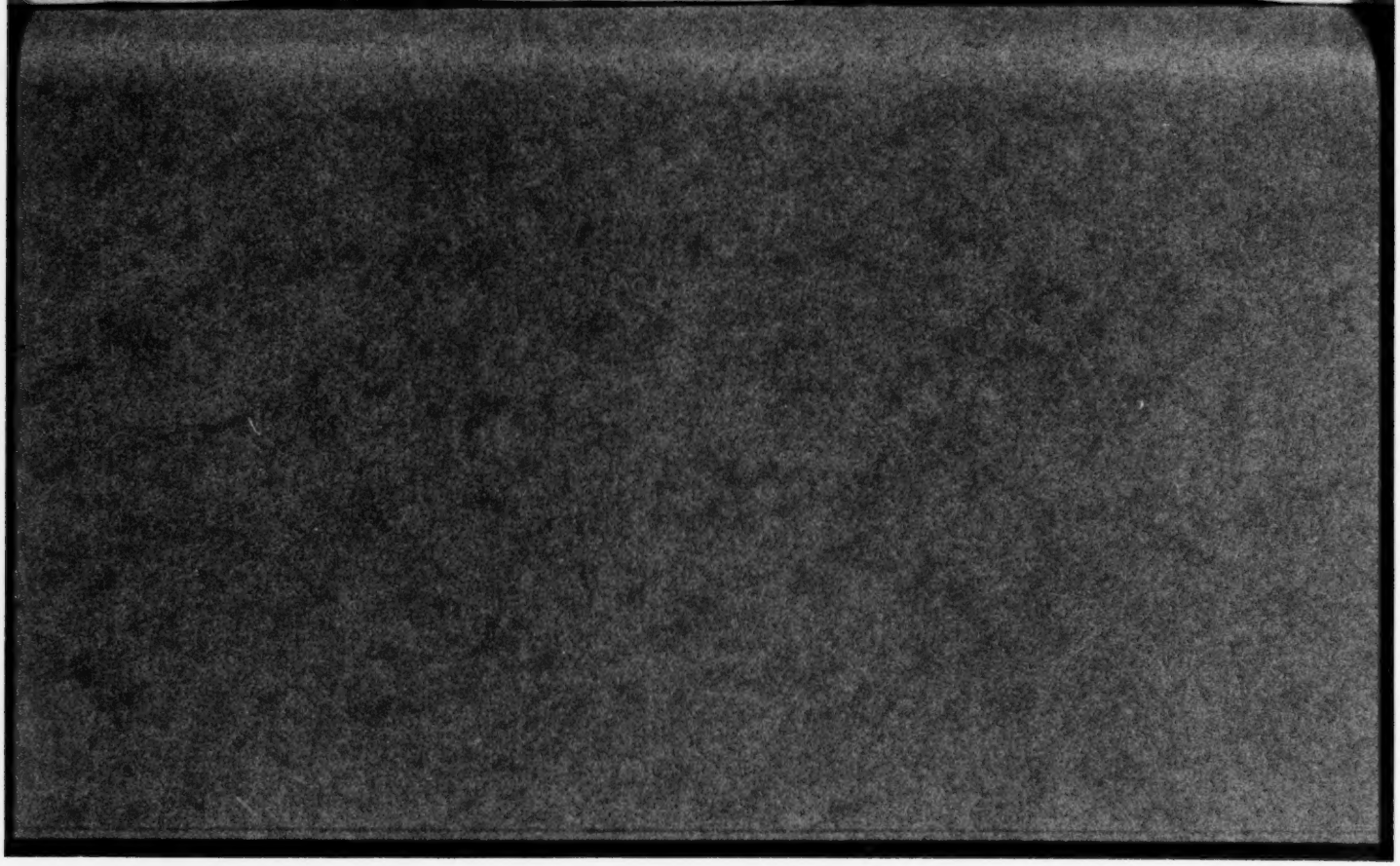

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Text

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1941

No. 1008

J. R. McDONALD, J. R. MASON and MARY E. MORRIS,
Petitioners,

vs.

BANTA CARBONA IRRIGATION DISTRICT,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Circuit.

STATEMENT OF THE CASE.

Petitioners state (Petition, p. 4):

"We are not inflicting on this Court a review of the evidence as to bankruptcy."

We assume, therefore, that the Finding that this District is insolvent and unable to meet its debts as they mature (R. 101) is not questioned.

Petitioners state further (Petition, p. 17):

> "We concede for the purpose of the case that the District stood menaced on January 1, 1939 with its entire bond debt and that as against petitioners the part of the debt bought up was 'owned' by the R.F.C."

This eliminates all argument relative to the status of the Reconstruction Finance Corporation (hereinafter called "R.F.C.") heretofore presented to this Court in petitions involving other California irrigation districts (*Citations infra*).

In the Petition, p. 12, and in Petitioners' brief, pp. 29-30, reference is made to a pleading by counsel for this District in an action involving the South San Joaquin Irrigation District brought pursuant to a California statute before the State Superior Court. There is not one word in the Record before this Court in this case of similar import. Furthermore, the matter of the debt composition proceedings of the South San Joaquin Irrigation District is now pending before the United States Circuit Court of Appeals for the Ninth Circuit, Proceeding No. 9788, and there is not one word of similar import in the record in that case as all counsel for Petitioners herein well know, inasmuch as they are also counsel for objecting bondholders in the South San Joaquin Irrigation District case.

In addition, the herein utterly immaterial State Court Petition quoted from itself completely nullifies the quoted language because in said Petition it is specifically provided, and the relief sought is, that all of that district's new refunding bonds be delivered to the R.F.C. and that objecting bondholders be given only the cash value fixed for their bonds pursuant to condemnation thereof as provided for in the State Act in question (Calif. Stats. 1937, Chap. 24, p. 92). It is evident, therefore, that Petitioners are not only going outside the Record before this Court in this case but are furthermore desperately grasping for a broken straw.

THE ISSUE.

The sole issue presented, stated briefly, is that the plan is unfair because the R.F.C. will get bonds while objecting bondholders will get cash (Petition, pp. 8-9).

ARGUMENT.

The Circuit Court in its opinion (*McDonald, et al. v. Banta Carbona Irrigation District* (1941, CCA 9), 123 Fed. 2d 968, 969) Record 386, 388, said:

> "The arrangement here made between the district and the Reconstruction Finance Corporation differs in no material respect from those arrangements thought unobjectionable in the Merced case and in Newhouse v. Corcoran Irrig. Dist., 9 Cir.,

114 F. 2d 690 and Bekins et al. v. Lindsay-Strathmore Irrig. Dist., 9 Cir., 114 F. 2d 680."

The three cases noted by the Circuit Court, and two others, all involving California irrigation districts before said Circuit Court, have all been before this Court. One, or the other, or both, of counsel for Petitioners herein represented Petitioners in each of said cases before this Court. They are:

West Coast Life Insurance Company, et al. v. Merced Irrigation District, 114 Fed. 2d 654 (1940, CCA 9); cert. den. (January 6, 1941) (*Pacific National Bank of San Francisco v. Merced Irrigation District*), 311 U.S. 718; rehearing den. (February 10, 1941) 312 U.S. 714;

Bekins, et al. v. Lindsay-Strathmore Irrigation District, 114 Fed. 2d 680 (1940, CCA 9); cert. den. (February 17, 1941) 312 U.S. 693; rehearing den. (March 17, 1941) 312 U.S. 716;

Moody, et al. v. James Irrigation District, 114 Fed. 2d 685 (1940, CCA 9); cert. den. (February 17, 1941) 312 U.S. 693;

Newhouse, et al. v. Corcoran Irrigation District, 114 Fed. 2d 690 (1940, CCA 9); cert. den. (January 6, 1941) 311 U.S. 717; rehearing den. (February 10, 1941) 312 U.S. 714;

Jordan, et al. v. Palo Verde Irrigation District, 114 Fed. 2d 691 (1940, CCA 9); cert. den. (February 17, 1941) 312 U.S. 693; rehearing den. (March 17, 1941) 312 U.S. 716.

Petitioners' principal authority, *American United Mutual Life Insurance Company v. City of Avon Park, Florida,* 311 U.S. 138, decided by this Court November 25, 1940, preceded consideration by this Court of each of the above cases. Their other authority, *Kaufman County Levee Improvement Dist. No. 4 v. Mitchell, et al.* (CCA 5), 116 Fed. 2d 959, was decided January 7, 1941, which also precedes final disposition by this Court of each of the above cases. Only a cursory review of the facts of Petitioners' aforesaid authorities reveals their inapplicability here. None of the admittedly unfair and objectionable features present in those cases exists in this case. Petitioners are mistaken (Petitioners' brief, p. 22) in the statement that the *City of Avon Park* case was not considered by this Court in the *Merced Irrigation District* case, and related cases from the same Circuit Court pending before this Court at about the same time. Said case is cited and differentiated at page 10 of the brief of Stephen W. Downey, Esq., counsel for Merced Irrigation District, dated December 9, 1940 and filed in opposition to petition for writ of certiorari, *Merced* case, Proceeding No. 591 before this Court.

The loan resolution in this case is Exhibit 9, R. 245-271, R. 138. The bond purchase contract is Exhibit 16, R. 280-293, R. 141-142. This Court has before it the records in the other California irrigation district cases, above noted, which records reveal that the corresponding documents in those cases are substantially similar to said documents in this case. Compare, for example, the loan resolution and bond purchase

contract in the *Corcoran Irrigation District* case, Proceeding No. 589 before this Court, which coincidentally bear the same exhibit numbers in that case as in the instant case, and are respectively Exhibit No. 9, R. 163, et seq., and Exhibit No. 16, R. 213, et seq., of the record in the *Corcoran Irrigation District* case.

A further examination of the record in said *Corcoran* case, pp. 354-355, reveals that in the Appellants' Statement of Points Relied On On Appeal, Points 12 and 15 raise the same questions presented here, to wit, that there is no proof that the value of what the plan offers to the dissenting bondholders equals the value of what is offered to the R.F.C. and that the plan is unfair and discriminatory because it contemplates issuing to the R.F.C. refunding bonds equal to the amount of its advances while giving to the dissenting bondholders only cash.

In the *Merced Irrigation District* case, 114 Fed. 2d 654, the Circuit Court at page 658 quotes from paragraph 5 (c) of the loan resolution. Identical language is contained in paragraph 5 (c) of the same resolution in this case (R. 258). Further in said *Merced* case, at page 666, the Court quotes from the bond purchase contract dated September 16, 1936. Identical language appears in the bond purchase contract in this case (R. 282-283). Obviously it is only reasonable that the procedure in all of these cases involving the refinancing of districts of the same nature by the R.F.C. should be thus uniform.

The complete answer to the sole issue presented is given by the Circuit Court in the *Merced Irrigation District* case at page 677 of 114 Fed. 2d as follows:

"The first contention is as follows: 'Assuming that R.F.C. is a creditor of the same standing as the appellants, the plan is unfair because it offers a 4% bond to the R.F.C., but denies a like privilege to the appellants.'

"Appellants misconstrue the plan and the relationship existing between the District and R.F.C. As we heretofore said, R.F.C. agreed to furnish money to the District to refinance its entire bonded debt at $515.01 for each $1,000 bond. The obligation assumed by R.F.C. was subject to the condition that all old securities should be purchased and held by R.F.C. until R.F.C. was satisfied that refinancing was complete. During this time, the old securities were to be kept alive and outstanding. When the refinancing was complete, then and then only was R.F.C. under the duty of buying and accepting refunding bonds, and surrendering the old securities for cancellation . . .

"In the present case R.F.C. has contracted to furnish the money necessary to make the composition effective, and to accept in turn refunding bonds at 4% for the amount of its advance. As holder of the old securities it is treated exactly as are all other bondholders—it will receive 51.501¢ on the dollar."

See also *Lindsay-Strathmore Irrigation District* case, 114 Fed. 2d 680 at page 684, and this District's resolution adopting the plan (R. 10-19).

This District, duly organized pursuant to the provisions of the California Irrigation District Act (Calif. Stats. 1897, Chap. 189, p. 254, as amended; Deering's General Laws, Act 3854), is a taxing agency

seeking composition of its indebtedness pursuant to Chapter IX of the Bankruptcy Act of 1898, as amended (11 U.S.C.A. Secs. 401-404). Chapter IX is a composition statute (*United States v. Bekins* (1938), 304 U.S. 27). The applicable principles are noted in the cited case and in the following decisions by this Court:

Cumberland Glass Mfg. Co. v. DeWitt (1915), 237 U.S. 447, 453;

Nassau Smelting & Refining Works v. Brightwood Bronze Foundry Company (1924), 265 U.S. 269, 271;

Myers v. International Trust Co. (1927), 273 U.S. 380, 383;

Louisville Joint Stock Land Bank v. Radford (1935), 295 U.S. 555, 585.

See also Footnote 14, page 119, of *Case v. Los Angeles Lumber Products Co.* (1939), 308 U.S. 106.

The directors of a California irrigation district have the general power to make and execute all necessary contracts and to issue refunding bonds (Sec. 15 and Secs. 32a, 32b, 32c, 32d and 32e, California Irrigation District Act, Calif. Stats. 1897, Chap. 189, p. 254, as amended; Deering's General Laws, Act 3854). In addition, they have specific statutory authority to cooperate and contract with the United States, or any agency thereof, to borrow or procure money for the purpose of financing or refinancing the obligations of the District. In this regard, they may perform all acts and enter into any contracts that may be necessary, including the issuance of bonds (Calif. Stats. 1917, Chap. 160, p. 243, as amended; Deering's

General Laws, Act 3873). (See particularly Section 11 added by Calif. Stats. 1933, Chap. 918, p. 2395, as amended).

The R.F.C., a corporation created by Act of Congress of the United States, is authorized to exercise general corporate powers and has power "to make contracts" (15 U.S.C.A. Sec. 604). By the express provisions of Section 36 of the Emergency Farm Mortgage Act of 1933, as amended, (43 U.S.C.A. Sec. 403), the R.F.C. has the power to make loans to reduce and refinance outstanding indebtedness to or for the benefit of, among others, irrigation districts, and such loans may be made through the purchase of securities issued or to be issued by such Districts. Throughout all of the documents adopted or executed by the District or the R.F.C. in the proceedings in this case, wherever appropriate, reference is constantly made to the foregoing statutes so that anyone examining or following the proceedings would be fully advised at all times of the authority pursuant to which action was being taken.

The off-the-record observation (Petitioners' brief, p. 30) relative to the sale by the R.F.C. of its bonds of other irrigation districts at a premium, besides being immaterial, is no proof whatsoever that the new bonds of this District can be sold at a premium.

The reference to the California statute (The California Districts Securities Commission Act, Calif. Stats. 1931, Chap. 1073, p. 2263, as amended; Deering's General Laws, Act 3857a), relative to the security behind the bonds to be issued (Petitioners' brief, p. 31), simply calls to the attention of this Court that

the new bonds issued or to be issued by all of the other California irrigation districts whose plans of composition have already been passed upon by this Court were issued or are to be issued pursuant to the same statute. The quoted portion of the statute refers to the value of the taxing agency's water, water rights, canals, reservoirs, reservoir sites, irrigation and power works, and other property owned by the taxing agency. But the capacity of the debtor taxing agency to pay is measured by its ability to levy and collect such taxes as the land owners therein are able to pay. While the operative assets of the District and the land therein are of "evidentiary value" on the question of ability to pay, they are not determinative of the issue. The District cannot tax its own works and properties, and hence in the tax producing sense they have no value.

"Since the 'assets' of a taxing district consist of the indefinite power to levy taxes, rather than any specific tangible property, there could be little use, of course, for the filing of any schedule corresponding to Schedule B of assets of the ordinary bankrupt." (Remington on Bankruptcy, 1939, Vol. 10, Sec. 4352, p. 245, in his chapter on "Composition of Taxing Agencies").

In the brief of Stephen W. Downey, Esq., *supra*, dated December 9, 1940, Proceeding No. 591 before this Court, *Merced* case, at pages 8-9, it was pointed out that "Failure to find value of District assets" and "Failure to find value of landowners' property" were *not* error. Assessed valuation of land in the District (Exhibit 31, R. 331, R. 151; Exhibit 32, R. 333, R. 152) and cost of District assets less depreciation (Exhibit

46, R. 352, R. 181) are fully set forth in the Record. The District assesses the land for its taxing purposes more than twice what it is assessed for by the County (R. 197).

None of the suggested reasons for the exercise of this Court's discretion in granting a review on writ of certiorari stated in Its Rule 38 exists in the instant case. As stated by Mr. Chief Justice Taft in *Magnum Import Co. v. Coty* (1923), 262 U.S. 159, 163:

> "The jurisdiction to bring up cases by certiorari from the circuit courts of appeals was given for two purposes: first, to secure uniformity of decision between those courts in the nine circuits; and, second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort. The jurisdiction was not conferred upon this court merely to give the defeated party in the circuit court of appeals another hearing."

The Petition should be denied.

Dated, Stockton, California,
March 31, 1942.

Respectfully submitted,
A. L. COWELL,
Counsel for Respondent.

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D. R. JACOBS,
PHILIP CAVALERO,
STEPHEN DIETRICH,
Of Counsel.

Due service and receipt of a copy of the within is hereby admitted

this _____ day of March, 1942.

_____

_____

Counsel for Petitioner.